

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
HARRISONBURG DIVISION

CLERK'S OFFICE U.S. DIST. COURT  
AT ROANOKE, VA  
FILED

JAN 14 2013

JULIA C. DUDLEY, CLERK  
BY: *B. W. M.*  
DEPUTY CLERK

NATHANIEL J. FAUBER,

Plaintiff,

v.

SPECIAL AGENT FIELDINGS, et al.,

Defendant.

Civil Action No.: 5:12cv091

By: Hon. Michael F. Urbanski  
United States District Judge

**ORDER**

This matter is before the court on a motion to dismiss by defendants' Fielding<sup>1</sup>, Lyon, and Flaherty (Dkt. No. 4), pro se motion to dismiss by defendant Morgan (Dkt. No. 9), motion to dismiss for failure to state a claim and for lack of jurisdiction by defendants Back, Fisher, Hammersberg, and Mock (Dkt. No. 12), and plaintiff's pro se motions for default judgment by jury trial (Dkt. No. 7), motion for default judgment (Dkt. No. 15), and pro se motion to proceed by jury trial (Dkt. No. 19). The motions were referred to the Honorable B. Waugh Crigler, United States Magistrate Judge, pursuant to 28 U.S.C. § 636(b)(1)(B), for proposed findings of fact and a recommended disposition of the motions. On October 22, 2012, the Magistrate Judge issued a Report and Recommendation noting that plaintiff's complaint had been improvidently filed due to pre-filing injunction issued by this court requiring review of any pleading submitted by plaintiff prior to its filing. In the Report and Recommendation, the Magistrate Judge, therefore, conducted a pre-filing review pursuant to the order and recommended that the case be dismissed with prejudice and all pending motions in this case be dismissed as moot. On

---

<sup>1</sup> Defendant notes that Special Agent S. Vincent Fielding was sued incorrectly as "Special Agent Fielding's."

November 1, 2012, plaintiff filed his objections to the Report and Recommendation (Dkt. No. 22).

As noted by the Magistrate Judge, plaintiff has a history of filing frivolous lawsuits in this court. Given this history, the court entered an order on December 20, 2010 requiring that all filings submitted by plaintiff be subject to a pre-filing review system. The order, in pertinent part, ordered the Clerk to

refuse and not docket any new filings submitted by Fauber before obtaining leave from the court; the court will grant leave only upon Fauber's submission of a properly filed pleading in which Fauber (i) demonstrates that the court has jurisdiction to hear his claims, and (ii) states claims that are not frivolous. The court will discard any submission that does not meet these requirements.

Fauber v. Commonwealth, et al., Civil Action No. 3:10cv059 (Dkt No. 37, pp.1-2)(footnote omitted).

No pre-filing review was conducted when this suit was first commenced. Therefore, the Magistrate Judge proceeded to conduct the pre-filing review in his Report and Recommendation noting that plaintiff's complaint was "incomprehensible" and failed to articulate any conduct that likely would subject the defendants to liability under § 1983. Specifically, the Magistrate Judge found that (1) the Eleventh Amendment barred claims against State and county defendants sued in their official capacity; (2) plaintiff's failure to prosecute claims failed as a matter of law as individuals have no right under the Constitution to prosecute a criminal violation; and (3) plaintiff's Fourth Amendment claims were not violated when officers, who were responding to a 911 call initiated within the home, entered his home with permission and threatened the use, but did not actually use, a taser because the alleged facts do not establish that the use of unreasonable force occurred as a matter of law. The court now adopts these findings from the Report and

Recommendation and finds that plaintiff has failed to demonstrate that his claims are not frivolous.

Similarly, plaintiff's objections to the Report and Recommendation are not well taken. Plaintiff does not address the findings of the Magistrate Judge, but rather complains that the Magistrate Judge's report is somehow biased against him.

After a review of the various pleadings, the Report and Recommendation, and plaintiff's objections thereto, it is clear that the Report and Recommendation must be adopted.

Accordingly, it is hereby **ORDERED** that this case be **DISMISSED** with prejudice for having failed to satisfy the pre-filing review requirement mandated by this court's pre-filing injunction dated December 20, 2010, that all other pending motions be **DISMISSED as moot**, and that the pre-filing injunction entered heretofore by this court continue.

The Clerk is directed to send a copy of this order to all counsel of record and to the plaintiff, proceeding pro se.

Entered: January 14, 2013

*/s/ Michael F. Urbanski*  
Michael F. Urbanski  
United States District Judge